

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GABRIEL RIVERA,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 23-CV-4217
	:	
PAUL LITTLE, <i>et al.</i>,	:	
Defendants.	:	

ORDER

AND NOW, this 22nd day of July, 2024, upon consideration of Defendants Motions to Dismiss (ECF Nos. 21 & 41), Plaintiff Gabriel Rivera's Responses thereto (ECF No. 33 & 43) and the Medical Defendants' Reply thereon (ECF No. 36), and pursuant to the Court's statutory authority to screen this case pursuant to 28 U.S.C. § 1915(e), it is **ORDERED** that:

1. The Motions are **GRANTED IN PART** and **DENIED IN PART** for the reasons stated in the Court's accompanying Memorandum as follows:

- a. The Motions are **DENIED** as to Rivera's Eighth Amendment claims for deliberate indifference to his serious medical needs against all Defendants to the extent those claims are brought against the Defendants in their individual capacities and seek money damages;
- b. Rivera's state law claims for medical negligence against the Medical Defendants remain in this case;
- c. All remaining claims are **DISMISSED WITHOUT PREJUDICE**.

2. Rivera is given leave to file a second amended complaint in the event he can cure the defects in any claims the Court has dismissed, with the exception of Rivera's claims against the DOC Defendants in their official capacities and the state law claims against the DOC

Defendants because amendment of those claims would be futile. Any second amended complaint must be filed within thirty (30) days of the date of this Order. Any second amended complaint must identify all defendants in the caption and must state all of the factual bases for Rivera's claims against each defendant by specifying the "who," "what," "where," "when," and "how" of each claim. The second amended complaint shall be a complete document that does not rely on the initial Complaint, Amended Complaint or other papers filed in this case to state a claim. **If Rivera files a second amended complaint and still intends to proceed on the claims the Court did not dismiss, he must replead those claims including all of the facts supporting those claims or they will not be considered part of this lawsuit. This means that if Rivera files a second amended complaint, he must reassert his Eighth Amendment and medical negligence claims along with all of the facts that support these claims, or the claims will be deemed abandoned.**¹ When drafting any second amended complaint, Rivera should be mindful of the Court's reasons for dismissing the claims in his Amended Complaint as explained in the Court's Memorandum.

3. The Clerk of Court is **DIRECTED** to send Rivera a blank copy of the Court's form complaint for a prisoner filing a civil rights action bearing the above civil action number. Rivera may use this form to file his second amended complaint if he chooses to do so.

4. If Rivera files a second amended complaint, the Defendants shall respond in the time frame set forth in Federal Rule of Civil Procedure 15(a)(3).

¹ Rivera should note that "an amended pleading supersedes the original pleading and renders the original pleading a nullity." *Garrett v. Wexford Health*, 938 F.3d 69, 82 (3d Cir. 2019). In other words, "the most recently filed amended complaint becomes the operative pleading." *Id.* This means that if Rivera files a second amended complaint, it is that document and that document alone that governs the contours of his claims.

5. If Rivera does not file a second amended complaint in response to this Order, the case will proceed only on Rivera's Eighth Amendment damages claims for deliberate indifference against all Defendants in their individual capacities and his medical negligence claims against the Medical Defendants. If Rivera does not wish to file a second amended complaint, he may submit a notice to that effect with this case number on it, 23-4217, for faster proceedings on his remaining claims.

6. If Rivera does not file a second amended complaint, the Defendants shall file an answer to the remaining claims within fourteen (14) days of the date of Rivera's notice that he seeks to proceed on his remaining claims or the expiration of the time for him to file a second amended complaint, whichever is earlier.

BY THE COURT:

/s/Kai N. Scott

KAI N. SCOTT, J.